

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

v.

ADALBERTO MARTINEZ-RAMIREZ,

Defendant.

8:16CR196

ORDER

This matter is before the Court on defendant Adalberto Martinez-Ramirez's ("Martinez-Ramirez") Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (Filing No. 227). On March 31, 2017, Martinez-Ramirez pled guilty pursuant to a written plea agreement to Counts I and X of the Superseding Indictment. Count I charged him with conspiring to distribute and possess with intent to distribute 500 grams or more of a mixture or substance containing methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1) and 846. Count X charged him with conspiring to commit money laundering, in violation of 18 U.S.C. § 1956(h). Martinez-Ramirez's plea agreement with the government, which the Court accepted at sentencing, limited his rights to appeal and collaterally attack his conviction and sentence.

After receiving and reviewing a presentence investigation report on Martinez-Ramirez and conducting a sentencing hearing, the Court sentenced him to 324 months imprisonment on Count I and 240 months on Count X, to run concurrently. Martinez-Ramirez did not appeal.

Martinez-Ramirez now seeks relief under § 2255, alleging his retained counsel was unconstitutionally ineffective in failing to (1) file an appeal as directed, (2) object to the inclusion of certain offense-level adjustments under the United States Sentencing

Guidelines, and (3) timely communicate a more-favorable plea offer from the government that Martinez-Ramirez would have accepted.

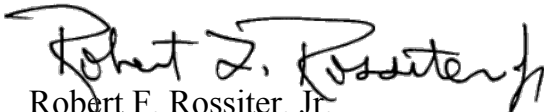
Rule 4(b) of the Rules Governing Section 2255 Proceedings for the United States District Courts requires the Court to complete a preliminary review of Martinez-Ramirez's § 2255 motion and order the United States Attorney to respond (or take other appropriate action), unless "it plainly appears from the motion, any attached exhibits, and the record of prior proceedings that the moving party is not entitled to relief."

The Court has completed that preliminary review and concludes summary dismissal is not warranted in this case. The United States Attorney must file an answer or otherwise respond to Martinez-Ramirez's motion on or before November 26, 2018.

IT IS SO ORDERED.

Dated this 29th day of October 2018.

BY THE COURT:


Robert F. Rossiter, Jr.
United States District Judge